

RATTET PLLC
(Proposed) Attorneys for the Debtor
202 Mamaroneck Avenue
White Plains, New York 10601
(914) 381-7400

(PROPOSED) HEARING DATE:
September 13, 2018 @ 10:00 a.m.

Robert L. Rattet
James B. Glucksman

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11
EMC Bronxville Metropolitan LLC, : Case No.: 18-22963-rdd
Debtor. :
----- x

**NOTICE OF MOTION FOR ORDER PERMITTING
RATTET PLLC TO BE RELIEVED AS COUNSEL
PURSUANT TO LOCAL BANKRUPTCY RULE 2090-1(d)**

PLEASE TAKE NOTICE, that upon the annexed application (the "Application") of Rattet PLLC the undersigned will move this Court, before the Honorable Robert D. Drain, United States Bankruptcy Judge, United States Bankruptcy Court, 300 Quarropas Street, White Plains, NY 10601 on September 13, 2018 at 10:00 in the forenoon, or as soon thereafter as counsel may be heard, for an Order Permitting Rattet PLLC To Be Relieved As Counsel Pursuant To Local Bankruptcy Rule 2090-1(d).

PLEASE TAKE FURTHER NOTICE that only the Court, the Debtor, the U.S. Trustee and parties filing Notices of Appearance are receiving the accompanying. Any party receiving this Notice and desiring to review the accompanying Application may review same on the Bankruptcy Court's website, www.nysb.uscourts.gov, PACER login and password required, or request same in writing by e-mail to rrattet@rattetlaw.com or jbglucksman@rattetlaw.com, facsimile, or by first class mail.

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion, must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and shall be filed with the Bankruptcy Court electronically in accordance with Administrative Order 473 (which can be found at www.nyeb.uscourts.gov) by registered users of the Bankruptcy Court's case filing system and, by all other parties in interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers) and served in accordance with Administrative Order 473, and upon: (a) Rattet PLLC, attorneys for the Debtor, 202 Mamaroneck Avenue, White Plains, New York 10601, attn: Robert L. Rattet and James B. Glucksman, Esq.; (b); Joseph E. Saracheck, The Saracheck Law Firm, 101 Park Avenue, 27th Floor, New York, NY 10178, email Joseph E. Saracheck joe@sarachecklawfirm.com and jonathan.miller@sarachecklawfirm.com; (c) the Office of the United States Trustee, 201 Varick Street, Suite 1006, New York, NY 10014, Attn: Andrea Schwartz, Trial Attorney; (d) Edgar M. Costa, Managing Member, EMC Bronxville Metropolitan LLC, by email to edgarmelocosta@icloud.com; (e) Nathan Schwed, Esq., Zeichner Ellman & Krause, 1211 Avenue of the Americas, 40th Floor, New York, NY 10036, email nschwed@zeklaw.com and (f)

any other parties who have filed requests for notices so as to be received no later than 5:00 p.m. (Eastern Time) at least one (1) day prior to the hearing scheduled herein.

Dated: White Plains, New York
September 5, 2018

RATTET PLLC
Attorneys for the Debtor
202 Mamaroneck Avenue
White Plains, New York 10601
(914) 381-7400

/s/ Robert L. Rattet
By: _____
ROBERT L. RATTET

RATTET PLLC
(Proposed) Attorneys for the Debtor
202 Mamaroneck Avenue
White Plains, New York 10601
(914) 381-7400

(PROPOSED) HEARING DATE:
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UNITED STATES BANKRUPTCY COURT
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In re : Chapter 11
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**APPLICATION FOR ORDER PERMITTING
RATTET PLLC TO BE RELIEVED AS COUNSEL
PURSUANT TO LOCAL BANKRUPTCY RULE 2090-1(d)**

**TO: THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:**

The application of Rattet PLLC (the "Applicant"), attorneys for the above captioned debtor (the "Debtor"), respectfully represents as follows:

1. On June 22, 2018 an involuntary Chapter 7 petition was filed against the Debtor by three alleged creditors of the Debtor (the "Petitioning Creditors").
2. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and the Amended Standing Order of Reference from the United States District Court for the Southern

District of New York, dated December 1, 2016.

3. Venue of this proceeding and the within application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. On July 18, 2018 the Debtor filed a Motion to Convert the Debtor's Involuntary Chapter 7 case to a case under Chapter 11 and a consent to relief under Title 11. On July 23, 2018 the Court entered an order converting the case to a case under Chapter 11.

5. On July 20, 2018 the Petitioning Creditors filed a proposed Order to Show Cause for the Appointment of a Chapter 11 Trustee. Instead of signing the proposed Order to Show Cause for the Appointment of a Chapter 11 Trustee (the "Trustee Motion"), the Court directed counsel for the Petitioning Creditors to obtain a hearing date. The Court assigned September 13, 2018 as the hearing date on the Trustee Motion.

6. On August 1, 2018 the Debtor filed a request to extend time to file schedules. (ECF Docket No. 15).

7. On August 2, 2018 the Court entered an order extending the Debtor's time to file Schedules of Assets and Liabilities and Statement of Financial Affairs (the "Schedules") until September 6, 2018. (ECF Docket No. 16).

8. A meeting of creditors pursuant to 11 U.S.C. § 341 was scheduled for September 5, 2018. The 341 meeting was adjourned to September 12, 2018.

9. On or about July 27, 2018 the Debtor's construction trailer at the Debtor's 759 Palmer Road, Bronxville, New York premises (the "Premises") was apparently broken into and

certain computer equipment containing information relating to the Debtor's assets and liabilities was removed.

10. Without access to the Debtor's computers, the schedules filed by the Debtor will, by necessity be incomplete.

11. Thus, Applicant sought to examine the Debtor's former bookkeeper, Sandra Romero, under oath and requested that she bring with her any tangible property of the Debtor, and appropriate access information for intangible property of the Debtor.

12. This office has met with Mr. Edgar Melo Costa to discuss retention as counsel in the Chapter 11 case, execution of a retainer agreement and payment of a retainer.

13. Mr. Costa has not executed the retainer agreement.

14. In an email dated August 15, 2018 from Mr. Glucksman to Mr. Costa, annexed hereto as Exhibit "1" along with Mr. Costa's response we wrote Mr. Costa as follows:

Dear Mr. Costa: Please be advised as follows:

- 1) We have not been retained in the case. This means that the proposed engagement letter has NOT been signed AND we have not been provided with funds as outlined in the retainer agreement;
- 2) The Court entered an order extending EMC Bronxville Metropolitan LLC's time to file schedules to September 6, 2018. We had requested September 12, 2018 so further extension is unlikely;
- 3) The U.S. Trustee has scheduled a 341 meeting for September 5, 2018;
- 4) The Motion of the Petitioning Creditors for a Trustee is calendared for September 13, 2018 and must be opposed;
- 5) This office will take no action on Items 2, 3 and 4 above without your executing the retainer letter and paying the initial retainer;
- 6) The time to commence making payments to the secured lender(s) and/or file a confirmable plan expires October 21, 2018. Our prior consultations indicate a confirmable plan would likely be built around the sale of the Debtor's real property to the highest and/or best bidder;

- 7) You have the right to retain counsel of your choice, but an LLC must appear through counsel; and
- 8) We will have to notify the Court of your failure to retain this office, or any attorney, by August 21, 2018 if you have not retained us or other counsel.

15. Mr. Costa responded on August 15, 2018 stating:

Good morning Mr. James,
Your office was NEVER retained regarding Bronxville.
My legal counsel is preparing a motion regarding Bronxville and Nyack to be present to the court regarding alleged fraudulent bankruptcy.

16. This office sent the Debtor partially prepared schedules, based on information that he provided. Mr. Costa has not completed the schedules, or the required Statement of Financial Affairs.

17. Mr. Costa has otherwise not been cooperative.

18. Throughout this Chapter 11 proceeding, Applicant's efforts to procure Debtor's compliance with its obligations have been unavailing, despite repeated phone calls and emails from this office.

APPLICANT REQUESTS AN ORDER RELIEVING IT AS COUNSEL

19. While the Debtor has not, by engagement letter, payment, order or otherwise retained Rattet PLLC as counsel, this office has in connection with the following:

- a) Consenting to the entry of an order for relief under Title 11, U.S.C.;
- b) Moving the Court to convert the case from Chapter 7 to Chapter 11;
- c) Moving the Court to extend the time to file schedules and statements of affairs;

and

d) Moving the Court to order Sandra Romero to appear for examination under Fed.R.Bankr.P. Rule 2004.

20. Thus, out of prudence we are moving for an order relieving this office as Debtor's counsel.

21. It appears that Applicant and Debtor disagree as to how to proceed in this Chapter 11 case as well as how to respond to certain pending matters. It should be noted that Debtor's outstanding obligations include (i) filing schedules and statements of affairs; (ii) appearing for examination pursuant to 11 U.S.C. §341; (iii) obtaining proof of insurance¹; (iv) executing a retainer agreement; and (v) by third party, providing a retainer. For these reasons, it is now unreasonably difficult for Applicant to represent the Debtor.

22. The Applicant cannot successfully represent a debtor who, by its conduct, renders it unreasonably difficult to carry out its employment effectively. See Rule 1.16(c)(7) of the Rules of Professional Conduct. In addition, the Applicant cannot be required to work without either an executed engagement letter or payment of retainer.

23. Without the requisite cooperation it is impossible for Applicant to assist the Debtor in opposing the Trustee Motion.

24. Thus, Applicant requests that the Trustee Motion be briefly adjourned to avoid prejudice to the Debtor by virtue of the instant motion.

25. Accordingly, Applicant requests that it be relieved of any further obligations to

¹ Despite repeated requests the Debtor has not provided proof of insurance.

Debtor pursuant to the Retainer Agreement entered into between the parties.

WHEREFORE, the Applicant respectfully requests that the Court permit Applicant to permissively withdraw as counsel to the Debtor, together with such other and further relief as is just, proper and equitable under the circumstances.

Dated: White Plains, New York
September 5, 2018

RATTET PLLC
Proposed Attorneys for the Debtor
202 Mamaroneck Avenue
White Plains, New York 10601
(914) 381-7400

/s/ Robert L. Rattet

By: _____
ROBERT L. RATTET

EXHIBIT “1”

James Glucksman

From: Edgar Costa <edgarmelocosta@icloud.com>
Sent: Wednesday, August 15, 2018 12:50 PM
To: James Glucksman
Cc: Edgar M. Costa; Robert Rattet
Subject: Re: Deadlines in EMC Bronxville Metropolitan LLC - 18-22963 (supplement to previous email)

Good morning Mr.James,

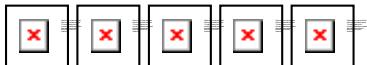
Your office was NEVER retained regarding Bronxville.

My legal counsel is preparing a motion regarding Bronxville and Nyack to be present to the court regarding alleged fraudulent bankruptcy.

Best Regards / ,Cordialement / مع أطيب التحيات /

 **Edgar Melo Costa**

phone: [+1.914.529.2387](tel:+1.914.529.2387)
fax: [+1.646.514.8715](tel:+1.646.514.8715)
web: www.edgarmelocosta.com
email: edgarmelocosta@icloud.com
skype: ed-emc



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On Aug 15, 2018, at 12:32 PM, James Glucksman <jbglucksman@rattetlaw.com> wrote:

Dear Mr. Costa:

Please be advised as follows:

- 1) We have not been retained in the case. This means that the proposed engagement letter has NOT been signed AND we have not been provided with funds as outlined in the retainer agreement;
- 2) The Court entered an order extending EMC Bronxville Metropolitan LLC's time to file schedules to September 6, 2018. We had requested September 12, 2018 so further extension is unlikely;
- 3) The U.S. Trustee has scheduled a 341 meeting for September 5, 2018;
- 4) The Motion of the Petitioning Creditors for a Trustee is calendared for September 13, 2018 and must be opposed;
- 5) This office will take no action on Items 2, 3 and 4 above without your executing the retainer letter and paying the initial retainer;

- 6) **The time to commence making payments to the secured lender(s) and/or file a confirmable plan expires October 21, 2018. Our prior consultations indicate a confirmable plan would likely be built around the sale of the Debtor's real property to the highest and/or best bidder;**
- 7) You have the right to retain counsel of your choice, but an LLC must appear through counsel; and
- 8) We will have to notify the Court of your failure to retain this office, or any attorney, by August 21, 2018 if you have not retained us or other counsel.

James B. Glucksman
(914) 381-7400 Office
(LinkedIn Profile)

This message is intended for the use of the individual or entity to which it is addressed and contains information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to this message and delete the original message from your system. Thank you.

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